**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 107 OF 2007.**

N.S.Jayanth Kumar. ... Appellant.
Versus.
Air India Ltd. ... Respondent.

Shri Santosh B.Narwade i/by M/s.M.P.Vashi & Associates for the Appellant.

Ms.Rekha Tawade i/by M/s.M.V.Kini & Co. for the Respondent.

**CORAM : ABHAY S.OKA, J.**

**DATED : 22nd February, 2007.**

**P.C.:**

1. Heard the learned Advocates appearing for the parties. A compilation of copies of all relevant documents on the record of the trial Court has been filed on record. I have perused the documents in the said compilation.

2. The Appellant is the original Plaintiff who was admittedly allotted the suit premises as a quarter by virtue of his employment with the Respondent. After superannuation of the Appellant, the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the said Act of 1971) passed an order of eviction against the Appellant. An Appeal was preferred by the Appellant for challenging the order of eviction. The said Appeal was withdrawn by the Appellant by giving an undertaking

to vacate the premises within three months. Thereafter a Writ Petition was filed by the Appellant and others in this Court which was rejected by order dated 31st March 1997 passed by this Court. In the said order, the Division Bench observed that the Appellant and others cannot impugn the order of eviction on the ground of non-payment of gratuity and provident fund.

3. The present suit was filed by the Appellant in the City Civil Court at Mumbai praying for temporary injunction restraining the Respondent from disturbing the possession of the Appellant in respect of the suit flat without following the due process of law and unless and until the retirement dues of the Appellant are paid. The said suit has been dismissed by the impugned Judgment and Order and the Appellant was directed to pay costs of Rs.5000/-.

4. The learned Advocate for the Appellant submitted that the dues payable to the Appellant have not been paid by the Respondent. He submitted that unless the dues are cleared, the Appellant will not be in a position to acquire any other premises and vacate the suit flat. He submitted that the possession was already taken of the suit flat on the basis of the order passed by the Estate Officer under the said Act of 1971 and now if the Appellant is to be dispossessed the Respondent

will have to adopt due process of law.

5. I have considered the submissions. The suit flat was occupied by the Appellant by virtue of his employment with the Respondent as a service quarter. Admittedly the Appellant retired with effect from 24th June 1992. An order of eviction was passed against the Appellant by the Estate Officer under the provisions of the said Act of 1971. An Appeal was preferred for challenging the said order which was withdrawn by the Appellant. The order of withdrawal was passed by the learned Principal Judge of the City Civil Court on 19th December 1996. In the said order, the learned Judge has noted that the request made by the present Appellant was that he was willing to withdraw the Appeal if he was granted some time to vacate the appeal premises. The learned Principal Judge of the City Civil Court granted time to vacate of three months. The Appeal was accordingly dismissed as withdrawn and the Appellant was granted time to vacate till the end of March 1997 on the condition of filing an undertaking to vacate the premises on or before 31st March 1997. The undertaking given by the Appellant to vacate the premises was accepted by the learned Principal Judge. The learned Principal Judge directed that the Appellant should give a further undertaking to be executed within a week from that date that he will vacate the Appeal Premises by

31st March 1997 and will make no further representation for extension of time and will not file any proceedings in the matter. This order which was invited by the Appellant himself has attained finality. The Division Bench of this Court in a writ petition filed by the Appellant and others in an order dated 31st March 1997 has taken a note of the aforesaid order passed on 19th December 1996. In fact the Division Bench observed that the petition filed by the Appellant suffers from vice of suppression of material facts.

6. In paragraph 10 of the plaint in the present suit, the Appellant has admitted that the possession of the suit flat was taken from him on 13th May 1997 on the basis of the order of eviction passed by the Estate Officer. The said paragraph records that the Appellant thereafter reoccupied the said flat and the Respondents have filed a criminal prosecution on the basis of the said action on the part of the Appellant.

7. Thus the admitted position is that the order of eviction passed by the Estate Officer in accordance with the law against the Appellant has attained finality. The Appellant was granted time to vacate in the statutory appeal. The Appellant was expected to give an undertaking to the effect that he will not take any further proceedings in respect of the said flat. Writ

Petition filed by the Appellant in this Court has failed with the observation of the Division Bench that the Appellant was guilty of suppression of material facts. The averments made in paragraph 10 of the plaint show that after the Appellant was evicted in accordance with the law, he has taken forcible possession of the flat. The prayer in the suit was for decree of perpetual injunction. An injunction is always a discretionary and equitable relief under the provisions of the Special Relief Act, 1963. Looking to the conduct of the Appellant, which is reflected from the record, by no stretch of imagination the Appellant was entitled to any discretionary relief. If the dues of the Appellant are not paid, it is for the Appellant to take out proceedings in that behalf. But that cannot be a ground for granting injunction for protecting possession over the suit flat which was unlawfully re-occupied by the Appellant after he was evicted by following due process of law. The Appellant has no right to occupy the suit flat. In my view, the trial Court was right in refusing to grant any relief in favour of the Appellant. Considering the conduct of the Appellant, the trial Court was right in directing the Appellant to pay costs of Rs.5000/-. There is no merit in the Appeal and the same is dismissed.

**Judge.**